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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/613,816

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Bryan Stephenson

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EXAMINER

LY, CHEYNE D

ART UNIT

PAPER NUMBER

2168

DATE MAILED: 08/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/613,816	<b>Applicant(s)</b> STEPHENSON, BRYAN	
	<b>Examiner</b> Cheyne D. Ly	<b>Art Unit</b> 2168	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 26 May 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

### **DETAILED ACTION**

1. Applicants' arguments filed May 26, 2006 have been fully considered but they are not deemed to be persuasive. Rejections and/or objections not reiterated from previous office actions are hereby withdrawn. The following rejections and/or objections are either reiterated or newly applied. They constitute the complete set presently being applied to the instant application.

2. Claims 1-28 are examined on the merits.

### **CLAIM REJECTIONS - 35 U.S.C. § 112, SECOND PARAGRAPH**

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-28 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5. The instant rejection has been necessitated by the claim amendments.

6. Claim 1 recites the limitation "said modification" in lines 10 and 11. The antecedent basis for this limitation in the claim is not clear because it is not clear whether said limitation is directed to the "new modification", "modification policy", or "modification of configuration." The same issue is present in claims 11 and 21. Claims 2-10, 12-20, and 22-28 are rejected for being dependent from claim 1, 11, or 21.

7. Claim 2, lines 3-4, recites "selecting said available resource...to replace said first resource of said particular type" which causes said claim to be vague and indefinite because the antecedent basis for the limitation of "said available resource" is not clear. For example,

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claim 1 recites the “modification on an available resource...wherein said resource pool includes a plurality of available resources.” Therefore, claim 2 is not clear as to whether the selection is directed to the modified available resource from the resource pool, or an available resource directly from the resource pool wherein no modification has been performed on said available resource. The same issue is present in claim 12.

### **Claim Rejections - 35 USC § 102**

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 1, 3-11, and 13-28 are rejected under 35 U.S.C. 102(b) as being anticipated by Golson et al. (US 5761505 A) (Golson hereafter).

10. This rejection is maintained with respect to claims 1, 3-11, and 13-28, as recited in the previous office action mailed January 25, 2006.

### **CLAIM INTERPRETATIONS**

11. Claim 1, lines 11-12, recites “said modification on a first resource that said available resource **will** replace”, wherein, the term “**will**” has been interpreted as an indication of the probability of an event happening in the future, however, said term does not necessarily limit the “available resource to replace the first resource.”

### **BASIS FOR PRIOR ART**

12. In regard to claim 1, Golson describes a method of managing modification of configuration states (column 1, lines 61-65, and column 2, lines 40-50) of a plurality of

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resources of multiple types (column 2, lines 25-29) in a dynamic data center (column 5, lines 57-67, and Figure 1) comprising:

- a. Creating a modification policy for said resources (column 6, lines 8-9). It is noted that the instant specification does not specifically define the limitation of “modification policy.” The exemplary disclosure (page 7, lines 5-14) discloses “modification policy is created to specify various parameters for controlling operation of the configuration state manager” wherein the disclosure of Golson cited above has been interpreted to anticipate the limitation as describe by the instant specification.
- b. Obtaining a new modification for a configuration state of resources of a particular type (column 1, lines 61-65, column 2, lines 40-50, and column 5, lines 24-27); and
- c. Automatically performing (column 2, line 45) said new modification to said configuration state of said resources of said particular type (column 7, lines 56-60, and column 8, lines 29-45) based on said modification policy (column 6, lines 8-9) by utilizing a resource pool (column 2, lines 55-63) without degrading a level of service provided by said resources of said particular type (column 3, lines 19-31), by performing said modification on an available resource before performing said modification said modification on a first resource that said available resource will replace (column 8, line 58, to column 9, line 8) wherein said resource pool includes a plurality of available resources of multiple types (column 2, lines 25-28).

13. In regard to claim 3, said dynamic data center is a utility data center (column 5, lines 57-67).

14. In regard to claim 4, said configuration state includes a firmware configuration state (column 5, line 34-35). It is noted that the limitation of firmware has been attributed with a customary and ordinary meaning of computer programming instructions that are stored in a read-only memory unit rather than being implemented through software.

15. In regard to claim 5, said configuration state includes an operating system configuration state (column 5, line 31).

16. In regard to claim 6, said configuration state includes an application configuration state (column 5, lines 44-45).

17. In regard to claim 7, said new modification is an update (column 3, lines 19-23).

18. In regard to claim 8, said plurality of resources includes a resource that is one of a server (column 4, lines 23-43).

19. In regard to claim 9, said obtaining said new modification includes testing said new modification (column 7, line 60, to column 8, line 6).

20. In regard to claim 10, said obtaining said new modification includes determining whether said new modification is certified for use in said dynamic data center (column 5, lines 24-27).

21. In regard to claims 11, 13-21, 23-28, Golson discloses a computer-readable medium and system (column 4, lines 9-22) for implementing the method cite above.

22. In regard to claim 22, Golson discloses a graphical user interface to enable creation of said modification policy (column 5, lines 42-56, Figure 2, and column 6, line 56, to 25).

## RESPONSE TO ARGUMENTS

23. Applicant argues that Golson does not teach the limitation of “automatically performing said new modification to said configuration states...on a first resource that said available resource will replace.” Applicant argument is not persuasive as discussed below.

24. Specific to the limitation of “based on said modification policy”, the instant specification does not specifically define the said limitation. Therefore, said limitation has been attributed with the customary and ordinary meaning a plan or course action for modification as understood by one of skill in the art. As previously cited, Golson describes a plan for a configuration tasks with instructions to **add, delete, or modify** a resource object (column 6, lines 1-31). Therefore, the cited disclosure reasonably anticipates the argued limitation.

25. Specific to the limitation of “by performing said modification on an available resource before performing said modification on a first resource...”, Golson describes “if a remote computer system is responsive (available), then the remote computer system will execute the configuration task...if a computer system 14 is nonresponsive (first resource)... This permits any such nonresponsive computer system to perform the task at a later time” (column 8, line 58, to column 9, line 8). Therefore, the cited disclosure reasonably anticipates the argued limitation.

26. Specific to the limitation of “that said available resource **will** replace”, the term “**will**” has been interpreted as an indication of the probability of an event happening in the future, however, said term does not necessarily limit the “available resource to replace the first resource.” Therefore, the cited disclosure reasonably anticipates the argued limitation.

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27. Claims 2 and 12 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims. The following is a statement of reasons for the indication of allowable subject matter: Claim 2 and 12 comprise steps for automatically performing the new modification wherein the further limiting steps are free of any prior art.

### CONCLUSION

28. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

29. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

30. Patent applicants with problems or questions regarding electronic images that can be viewed in the Patent Application Information Retrieval system (PAIR) can now contact the USPTO's Patent Electronic Business Center (Patent EBC) for assistance. Representatives are available to answer your questions daily from 6 am to midnight (EST). The toll free number is (866) 217-9197. When calling please have your application serial or patent number, the




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type of document you are having an image problem with, the number of pages and the specific nature of the problem. The Patent Electronic Business Center will notify applicants of the resolution of the problem within 5-7 business days. Applicants can also check PAIR to confirm that the problem has been corrected. The USPTO's Patent Electronic Business Center is a complete service center supporting all patent business on the Internet. The USPTO's PAIR system provides Internet-based access to patent application status and history information. It also enables applicants to view the scanned images of their own application file folder(s) as well as general patent information available to the public.

31. For all other customer support, please call the USPTO Call Center (UCC) at 800-786-9199. The USPTO's official fax number is 571-272-8300.

32. Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Dune Ly, whose telephone number is (571) 272-0716. The examiner can normally be reached on Monday-Friday from 8 A.M. to 4 P.M.

33. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tim Vo, can be reached on (571) 272-3642.

C. Dune Ly /   
Patent Examiner  
8/2/06



TIM VO  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2100